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JUN 11 1992

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF)
)
AMENDMENT OF PART 90 OF THE) PR DOCKET No. 92-79
COMMISSION'S RULES TO ELIMINATE)
SEPARATE LICENSING OF END USERS)
OF SPECIALIZED MOBILE RADIO SYSTEMS)

Comments
of the
Cellular Telecommunications Industry Association

1. The Cellular Telecommunications Industry Association ("CTIA") is the trade association of the cellular industry. Its members include over 90% of the licensees providing cellular service to the United States and Canada. CTIA's membership also includes cellular equipment manufacturers, support service providers, and others with an interest in the cellular industry. In Amendment of Part 90 of the Commission's Rules to Eliminate Separate Licensing of End Users of Specialized Mobile Radio Systems, Notice of Proposed Rule Making, PR Docket No. 92-79, FCC 92-172, adopted: April 9, 1992; released: May 5, 1992 ("NPRM"), the Commission has proposed a number of changes to the rules of the Specialized Mobile Radio Service ("SMR"). One proposed change is the elimination of the requirement that end users of SMR systems be separately licensed. In various proceedings CTIA has commented on the blurring of the distinction between Private Carrier and Common Carrier services.¹ End user licensing is the last significant distinction between the two services. For this reason CTIA submits these comments.

¹ See, e.g., Elimination of Specialized Mobile End User Licensing Requirement, FCC RM-6755, Comments of the Cellular Telecommunications Industry Association, filed June 12, 1992.

2. Just over two years ago, the Commission's Private Radio Bureau addressed the issue of eliminating the end user licensing requirement. At that time, the Bureau concluded:

Given that the end user requirement information is required to carry out functions integral to our licensing process, we foresee a continuing need to collect such information in some format. To this end, there is no viable alternative before us that would result in the collection of end user information essential to our processes at this time. We have therefore decided to terminate this proceeding without further action.

Amendment of the Commission's Rules to Modify Application Requirements for End Users of Specialized Mobile Radio Systems, 5 FCC Rcd 2975 (1990). The NPRM observes that the Commission previously had been reluctant to eliminate separate end user licensing because it found specific proposals before it inadequate, citing to the proceeding quoted above. NPRM at ¶ 3. The Commission also states that the instant proceeding was initiated on its own motion. NPRM at ¶ 1.

3. Given the above, the obvious issue the NPRM fails to discuss is the change in the Commission's "continuing need" that has occurred since the last proceeding that warrants eliminating the end user licensing requirement for SMRs. CTIA is unaware of any statutory or regulatory change which would eliminate the Commission's responsibility for end user licensing. While the Commission indicates that prior proposals for eliminating the licensing requirement were inadequate, no new proposals have been submitted for consideration. Moreover, the change proposed by the NPRM, that the SMR base station licensee be responsible for assuring that end users comply with regulatory requirements, is identical to the arrangement considered and rejected in 1990.² Aside from the always laudable desire to reduce paper work, the

² Compare NPRM at ¶ 5 with 5 FCC Rcd at 2975, ¶ 2.

Commission offers no explanation to justify what its expert bureau has found to be inappropriate. CTIA submits that the NPRM fails to overcome the Commission staff's own rationale for preserving the end user licensing requirements.

4. Also, in the NPRM the Commission abandons any concern, no matter how slight, that only "eligible users" use SMR facilities. The Commission cites Section 332(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §332(c)(1), as providing that a private land mobile licensee is a private carrier "unless the licensee resells local exchange telephone service for a profit."³ In the Commission's view, this apparently is the only remaining statutory distinction between common and private carriers. Nevertheless, the language of Section 332(c)(1) clearly and unambiguously refers to "eligible users." To quote:

For purposes of this section, private land mobile service shall include service provided by specialized mobile radio, multiple licensed radio dispatched systems, and all other radio dispatch systems, regardless of whether such service is provided indiscriminately to eligible users on a commercial basis....[emphasis added]

CTIA recognizes that the Commission has greatly expanded what constitutes an "eligible user" since the enactment of this language in 1982. Nevertheless, if the Commission believes the "eligible user" requirement is so circumscribed that little or no effort needs to be made to assure compliance, it should squarely confront the statutory provision and say so. The NPRM refers to eligibility only in a footnote and seems more concerned with FAA and environmental regulations than with the language of the Communications Act.⁴

³ NPRM at footnote 11, citing American Teletronix, 3 FCC Rcd 5347 (1988), recon. denied 5 FCC Rcd 1955 (1990).

⁴ In footnote 16 of the NPRM, the Commission refers to who is eligible under the Commission's Rules to be served by an SMR base station. The Commission states that the only

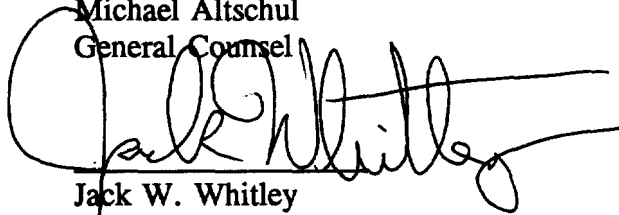
5. CTIA previously has asked the Commission to initiate a proceeding to establish a coherent and consistent policy affording fair treatment to both common and private land mobile facilities. The NPRM represents another lost opportunity to initiate such a proceeding. There currently is pending before the Commission, however, a petition for rule-making filed by Telocator, in which such issues can be addressed.⁵ Whether through that petition or another proceeding, CTIA urges the Commission to address whether the private/common carrier distinction has any continued vitality in the current competitive land mobile environment.

Respectfully Submitted,

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limitation is that "foreign governments or representatives of foreign governments" can not be offered service.

⁵ On September 4, 1991, Telocator filed a Petition for Rule Making (FCC RM-7823) asking to expand the flexible cellular service options afforded to cellular telecommunications licensees under §22.930 of the Commission's Rules by allowing cellular carriers to provide auxiliary and non-common carrier services. In comments in support of the petition, CTIA urged the Commission to initiate a rule making proceeding where the disparate regulation of private and common carrier mobile services could be fully considered.